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Supreme Court, U.S.

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JOSEPH F. SPANIOL, JR.
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IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1987

RICHARD L. DUGGER, *et al.*,

Petitioners,

VS.

AUBREY DENNIS ADAMS, JR.,

Respondent.

On Writ of Certiorari to the United States Court of
Appeals for the Eleventh Circuit

MOTION OF AMICUS CURIAE FOR LEAVE TO FILE
BRIEF IN SUPPORT OF PETITIONER

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Pursuant to Supreme Court Rule 36.3, the Criminal Justice Legal Foundation respectfully moves for leave to file the accompanying brief amicus curiae in support of petitioners in the above captioned case. Counsel for petitioner has consented in writing. Counsel for respondent has consented by telephone, but amicus has not received his written consent as of the last day to file the motion and brief.

In the accompanying brief, amicus argues that this court should adopt the view of retroactivity advocated by Justice Harlan in *Mackey v. United States*, 401 U.S. 667, 675-702 (1971) (concurring and dissenting).

Amicus will demonstrate that petitioner should not be allowed to raise a *Caldwell* claim on habeas corpus. A *Caldwell* claim cannot qualify as "novel" under *Reed v. Ross* 468 U.S. 1 (1984) and at the same time be applied retroactively on habeas under the Harlan view.

The Criminal Justice Legal Foundation (CJLF) is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society to rapid, efficient and reliable determination of guilt and swift execution of punishment.

The present case involves the extended relitigation of the legality of a trial conducted many years ago in compliance with the then-existing standards. Such unnecessary relitigation is contrary to the rights of victims and society which CJLF was formed to advance.

For the foregoing reasons amicus requests leave to file its brief.

Dated: April 21, 1988

Respectfully submitted,

KENT S. SCHEIDEDEGGER
Attorney for Amicus Curiae
Criminal Justice Legal Foundation

